

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States** 211  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

March 26, 2018

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

The Honorable Michael O’Rielly  
Commissioner  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

The Honorable Brendan Carr  
Commissioner  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai, Commissioner O’Rielly, and Commissioner Carr:

We write to request that your offices provide information and legal analysis about your decision to speak at the Conservative Political Action Conference (CPAC) on February 23, 2018.<sup>1</sup> Your willingness to attend and help promote a political rally raises serious concerns about your roles as leaders of an independent federal agency, and the potential of taxpayer dollars being spent towards political ends.

As you know, Congress created the Federal Communications Commission (FCC) to operate as an independent federal agency,<sup>2</sup> insulated from the politics affecting the executive branch. As the Supreme Court explained in a 1935 decision, the public should be able to expect that independent agencies will carry out their responsibilities in a nonpartisan manner, acting with “entire impartiality” and “charged with the enforcement of no policy except the policy of

---

<sup>1</sup> *FCC Republican Faces Ethics Complaint After Calling for Trump’s Re-Election*, Ars Technica (Feb. 26, 2018) (available at [www.arstechnica.com/tech-policy/2018/02/ajit-pai-accused-of-violating-ethics-rules-by-getting-nra-courage-award](http://www.arstechnica.com/tech-policy/2018/02/ajit-pai-accused-of-violating-ethics-rules-by-getting-nra-courage-award)).

<sup>2</sup> 47 U.S.C. § 154; see also Congressional Research Service, *The Federal Communications Commission: Current Structure and Its Role in the Changing Telecommunications Landscape* (CRS Report No. RL32589) (Dec. 15, 2017).

The Honorable Ajit V. Pai  
The Honorable Michael O'Rielly  
The Honorable Brendan Carr  
March 26, 2018  
Page 2

the law.”<sup>3</sup> This independence instills public confidence in the agency’s decisions, insulating it from “suspicion of partisan direction.”<sup>4</sup> Yet under your collective leadership, the FCC has become not only more partisan, but increasingly political.

Despite the Congressional intent set out in the Commission’s authorizing statute, Commissioners seem to be using their positions during this administration as a platform to promote and even raise funds towards a political agenda.<sup>5</sup> Indeed, some statements by Commissioners made during recent events have created deep partisan divide at the FCC.<sup>6</sup>

Most recently, this pattern of behavior was amplified when you—the three Republican FCC Commissioners—participated in the CPAC, a political conference and fundraiser for the American Conservative Union.<sup>7</sup>

Predictably, your attendance at CPAC led to a number of ethically questionable situations. For instance, just weeks after the terrible tragedy in Parkland, Florida, Chairman Pai was presented with the National Rifle Association’s “Charlton Heston Courage Under Fire Award” and a handmade firearm in recognition of the FCC’s efforts to repeal net neutrality.<sup>8</sup> While we commend Chairman Pai’s ultimate decision to turn down the award from the NRA, we are nonetheless concerned about how an FCC Chair allowed himself to be put in a situation where such an ethically questionable award could be presented to him.<sup>9</sup> Additionally,

---

<sup>3</sup> *Humphrey’s Executor v. United States*, 295 U.S. 602, at 624-25 (1935) (analyzing the FTC’s independence from the Executive branch).

<sup>4</sup> *Id.*

<sup>5</sup> Americans for Tax Reform, *FCC Chairman Ajit Pai on the Grover Norquist Show: Repealing Title II Regulations* (May 22, 2017) (<https://www.atr.org/fcc-chairman-ajit-pai-grover-norquist-show-repealing-title-ii-regulations>); FreedomWorks, *FreedomWorks and Small Business & Entrepreneurship Council Host Ajit Pai: ‘The Future of Internet Regulation’* (April 24, 2017) (press release).

<sup>6</sup> *FCC Chairman Weighs in on Net Neutrality Debate*, *Fortune* (April 26, 2017).

<sup>7</sup> Agenda, *Conservative Political Action Committee 2018* (available at <https://docs.google.com/viewerng/viewer?url=http://cpac.conservative.org/wp-content/uploads/sites/2/2018/02/CPAC-2018-Agenda-Draft-2.22.18.pdf>)

<sup>8</sup> *FCC Chair Pai Receives NRA Gun Award for Courage*, *The Hill* (Feb. 23, 2018).

<sup>9</sup> *Shaub Presses FCC Chief Over Possible Ethics Violation with NRA Gift*, *The Hill* (Feb. 25, 2018).

The Honorable Ajit V. Pai  
The Honorable Michael O'Rielly  
The Honorable Brendan Carr  
March 26, 2018  
Page 3

Commissioner O'Rielly may have violated the Hatch Act by calling for President Trump's reelection,<sup>10</sup> leading to a complaint being filed with the Office of Special Counsel.<sup>11</sup>

In order to ensure that taxpayer dollars are not being spent for inappropriate political purposes, we request that you each, separately, provide answers to the following inquiries:

1. Did you seek advice from your General Counsel about whether you could attend CPAC under the FCC's or other relevant ethics rules? Please provide any written legal analysis you received approving your attendance for this event.
2. Did you or your staff conduct any research prior to attending CPAC about how the organization or the American Conservative Union would use the funds raised at this event? Did you ensure that no funds raised at the event would be spent for political purposes or to influence elections? Please provide any internal analysis that resulted from this research.
3. Your likeness was included in advertising for the event, specifically for the purpose for increasing attendance at the event and potentially raising funds for political purposes. According to the CPAC website, tickets for the fundraiser were offered for \$5,000 or more. Did you seek guidance from your General Counsel about whether your likeness or your official title could be used in advertising for this event? Please provide any written legal analysis you received approving the use of your likeness or your official title in advertising for this event.
4. Are you aware of any prior FCC Chairs or Commissioners who attended CPAC while they were serving in office? If so, was their attendance requested for the purpose of delivering a speech, did they make any political remarks, or did they accept any gifts? Was their attendance also used to advertise the event?
5. Are you aware of any other heads of independent agencies that have attended CPAC? If so, was their attendance requested for the purpose of delivering a speech, did they make any political remarks, or did they accept any gifts? Was their attendance also used to advertise the event?
6. Did you appear at CPAC during business hours? If so, did you earn a government salary during that time? Please provide timesheets indicating whether you took the time off to attend or prepare for the event. Please also provide copies of all communications

---

<sup>10</sup> American Oversight, *FCC Commissioner Calls for Trump's Reelection, Violates Hatch Act* (February 23, 2018) (available at [www.americanoversight.org/fcc-commissioner-calls-trumps-reelection-violates-hatch-act](http://www.americanoversight.org/fcc-commissioner-calls-trumps-reelection-violates-hatch-act)).

<sup>11</sup> *Id.*



The Honorable Ajit V. Pai  
The Honorable Michael O'Rielly  
The Honorable Brendan Carr  
March 26, 2018  
Page 4

between you, or other Commission employees working on your behalf, and representatives of the American Conservative Union or CPAC, related to your appearance at CPAC.

7. Did any member of your staff help you write your speech or otherwise prepare for your appearance at the event? If so, how much of their time was spent in preparation? Did it occur during FCC business hours? Please provide time sheets for all staff members who assisted you in preparing for your appearance at CPAC, as consistent with the Privacy Act,<sup>12</sup> indicating whether they took time off to assist you in preparing for the event.
8. Did any member of your staff accompany you to CPAC? For any staff members who attended the event with you, please provide their FCC time sheets, as consistent with the Privacy Act,<sup>13</sup> indicating whether they took time off to accompany you to the event.
9. Were government-owned or leased vehicles used for transportation to or from CPAC? If so, please provide all specific accounting for the use of these vehicles carrying FCC employees to and from the event.
10. Please provide a specific accounting of how all federal funds were used to support your appearance at CPAC, including pro-rated staff time and the use of any federal resources that were used for the purpose of facilitating your appearance.

We appreciate your attention to this important matter, and we hope that we can work together to restore the FCC's standing as an independent, non-political, and expert agency. Please provide individual responses to this letter by April 16, 2018. Should you have any questions regarding this request, please contact Gerald Leverich of the Democratic Committee staff at (202) 225-3641.

Sincerely,

  
Frank Pallone, Jr.  
Ranking Member

  
Mike Doyle  
Ranking Member  
Subcommittee on Communications  
and Technology

---

<sup>12</sup> 5 U.S.C. § 552a.

<sup>13</sup> 5 U.S.C. § 552a.



Federal Communications Commission  
Washington, D.C. 20554

Thomas M. Johnson, Jr.  
General Counsel

April 16, 2018

The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515-6115

The Honorable Michael F. Doyle  
Ranking Member  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
United States House of Representatives  
239 Cannon House Office Building  
Washington, D.C. 20515-3814

Dear Representatives Pallone and Doyle:

I write in response to your March 26, 2018 letter, addressed to Chairman Ajit Pai and Commissioners Michael O’Rielly and Brendan Carr, regarding their recent appearance at the Conservative Political Action Conference (CPAC) hosted by the American Conservative Union (ACU). At CPAC, the three Commissioners took part in a panel discussion entitled “To Infinity and Beyond: How the FCC is Paving the Way for Innovation.”

Your letter suggests that the Commissioners’ participation at CPAC may have been “ethically questionable.” To the contrary, their participation was consistent with a long tradition of Commissioners contributing to robust debate on issues of importance to the agency and the nation. For example, at the CPAC panel in question, the Commissioners discussed topics ranging from empowering entrepreneurs to develop new technologies to expanding broadband access to Americans in rural areas. The Commissioners’ ability to accept prominent speaking engagements like this one helps promote transparency and accountability and encourages public participation and interest in Commission rulemakings, without contravening applicable ethics obligations.

Indeed, because the Commission consists of Presidentially appointed members from both political parties, Commissioners routinely speak at events sponsored by groups or attended by individuals whose viewpoints span the legal and political spectrum. In recent years, Commissioners have made appearances at events sponsored by the Center for American Progress, the Rainbow/PUSH Coalition, the Progressive Policy Institute, the Heritage Foundation, and the Federalist Society, to name a few examples. This tradition of bipartisan participation in a broad array of legal and public policy conferences does not, and has never been understood to, violate applicable ethics rules.

As your letter notes, the Hatch Act, its implementing regulations, and federal ethics rules place important limitations on the activities of public officials. Accordingly, career ethics attorneys in the Commission's Office of General Counsel regularly train and advise Commissioners and their staff on compliance with the Hatch Act and other legal and ethical requirements. As explained below, however, our career agency ethics officials have consistently treated the Commissioners' participation on panels at events such as CPAC as well within the bounds of what applicable rules allow. Indeed, career ethics officials advised the Chairman's Office prior to the event that it would be appropriate for the three Commissioners to appear together on the panel in question.

The Hatch Act places certain limitations on covered Executive Branch employees (including Commissioners) who participate in political activity. Political activity, however, is narrowly defined as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." 5 C.F.R. § 734.101. By participating in a panel at CPAC this year and in past years, the Chairman and Commissioners were not engaging in partisan political activity. Rather, they were presenting information on behalf of the Commission, including both facts and opinions on public policy issues within the agency's purview.

The mere fact that the leadership or audience at an event may lean in one political direction does not transform an organization into a "partisan political group" under the Hatch Act. The ACU, a tax-exempt 501(c)(4) organization, describes itself as "the leading entity in providing conservative positions on issues to Congress, the Executive Branch, State Legislatures, the media, political candidates, and the public." American Conservative Union, <http://conservative.org/about/>. While ACU has a conservative outlook, it is not affiliated with any one political party, and tickets to CPAC are available for sale to the public regardless of political affiliation. Similarly, the Center for American Progress, a 501(c)(3) organization, describes itself as "dedicated to improving the lives of all Americans, through bold, progressive ideas," but has no formal party affiliation—despite partnering with a 501(c)(4) that engages in some political advocacy. Center for American Progress, <https://www.americanprogress.org/mission/>.

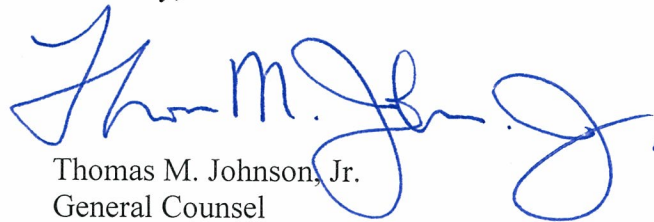
The U.S. Office of Special Counsel, which is tasked with interpreting and implementing the Hatch Act, has reviewed these common arrangements among non-profit organizations and concluded that even though 501(c)(4)s like ACU are permitted to participate in some political activity on behalf of or in opposition to candidates, they are not "partisan political group[s]" for purposes of the Act because political activity is not their primary activity. U.S. Office of Special Counsel, <https://osc.gov/Pages/HatchAct-FAQs.aspx>.

Because participation at CPAC is not political activity, as defined by the Hatch Act, there was no need for any Commissioner to abide by the limitations that the Act places on the use of appropriated funds, official staff, or agency resources in connection with such activity. *See* 5 C.F.R. § 734.503. Rather, it was entirely appropriate for those Commissioners to use staff resources to prepare remarks and otherwise assist them in appearing before CPAC.

Nor did the Commissioners violate any legal or ethical rule by accepting free admission to CPAC. Pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch, when an agency official is asked to speak at an event, his or her attendance is not a gift for ethics purposes, nor is the attendance of accompanying staff. *See* 5 C.F.R. § 2635.203(b)(8). Relatedly, as the Commissioners appeared at the event to discuss FCC programs and policies, the inclusion of the Commissioners' photos along with other speakers in materials about the event was appropriate and consistent with ethical rules and standards.

The Commission and the Office of General Counsel take our ethical responsibilities very seriously, and when issues arise, we take prompt action to address them, including, where appropriate, cooperating and coordinating with the Office of Government Ethics and the Office of Special Counsel. The Commissioners, however, acted well within their rights under the Hatch Act and federal ethical rules by participating in the CPAC panel and consistent with the practice of past Commissioners appointed under both Democratic and Republican Presidents. I trust this information has been helpful to you and thank you for your inquiry.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas M. Johnson, Jr.", with a stylized flourish at the end.

Thomas M. Johnson, Jr.  
General Counsel